

March 1, 2019

Chief Michael Geier  
Chief of Police  
Albuquerque Police Department  
400 Roma Ave. NW  
Albuquerque, NM 87102

RE: Prosecutorial review of the October 4<sup>th</sup>, 2017 shooting of Juan Davila-Vasquez by Albuquerque Police Department Officers Chris Enyart, Louie Armijo, Jesse Martinez, and Nicholas Nielsen .

APD case # 170097157; DA case # 2017-08595-1

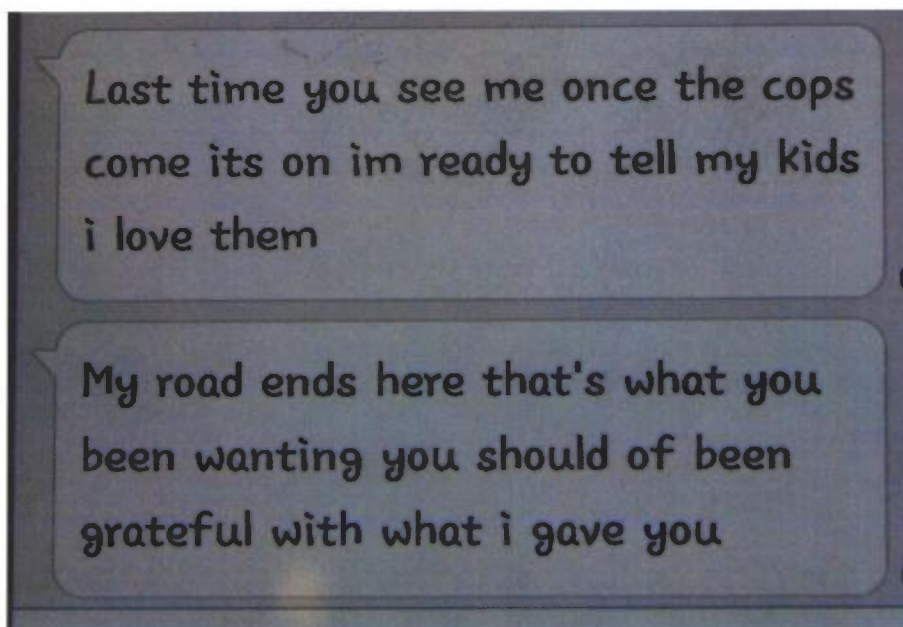
Dear Chief Geier:

I have been appointed as a Special Prosecutor by Raul Torrez, the Second Judicial District Attorney, to review the shooting of Juan Davila-Vasquez on October 4, 2017, for potential prosecution. I reviewed all available evidence, including police reports, witness statements, videos, photographs, and visited the scene of the incident. Based on my review, I conclude that it is not possible to prove, beyond a reasonable doubt, that the police officers were not acting under the reasonable belief that Juan Davila-Vasquez's actions posed a threat of death or great bodily harm to police officers or the public in general. No charges will be filed: the District Attorney's case will be closed. This decision does not limit administrative or criminal action by other agencies, or civil actions by other parties.

#### STATEMENT OF FACTS

On October 4, 2017, Sarah Davila was at her home on 7919 Brady Road, NW, where she lived with her three children, Juan, age eight, Angel, age seven, and Adrian, age four, and Juan Gonzales, her father. That evening, Juan Davila-Vasquez, Sarah's husband, who did not live with them, was drunk, high, and belligerent: he had a history of trouble with drugs, especially heroin and methamphetamines. As his father-in-law, Juan Gonzales described it, "When he starts doing drugs and he starts doing alcohol and he, he just turns into the devil."

On this particular night, he was angry about money: he'd won some money at the casino the day before and given some to his wife, Sarah. Now he was desperate to get it back to pay for court ordered counseling the next day (he' was out on bond, having been arrested on May 5, 2017 for armed robbery and kidnapping). Sarah didn't have the cash, however, she had deposited it in the bank that day. Davila-Vasquez became livid and started to hit her. She covered herself with a blanket to cushion the blows-this was not the first time he had beaten her with his fists. The confrontation took a deadly serious turn when Davila-Vasquez found Sarah's pistol, which she had hidden in the closet. When he threatened her with the gun, she was afraid he'd kill her. She yelled at her son Julian to run across the street, to a neighbor's house and call 911. She then grabbed her two other children and ran out to her car. She drove away but soon came back, looking for Julian. By then her father, Juan Gonzales, having heard the commotion, stepped in to try to calm Davila-Vasquez, who was now walking around in front of the house, holding the pistol. Juan asked him what he was doing, and he said he just wanted to end it. While waiting for the police to arrive, Davila-Vasquez texted his wife:



As the police arrived, he yelled, "I'm going to kill myself and I'm going to kill everyone around me."

Four officers arrived, Officer Chris Enyart, Sergeant Louie Armijo, Officer Jesse Martinez, Sergeant Dennis Montoya: they pulled up in two SUVs and parked, one behind the other across the end of the street near the Davila home; effectively blocking the street and providing themselves with cover. Another officer, Nicholas Nielsen, was sent down the street from the other end to order a curious neighbor to go back inside their home.. They planned to approach Davila-Vasquez and attempt to convince him to drop his weapon and surrender, Officer Martinez was assigned to talk to Davila-Vasquez and try to establish a rapport. Officer Martinez was also to use his 40 mm impact launcher, which fires a heavy rubber disc, if it became necessary. Before they could put their plan into action, Davila-Vasquez stepped out of the darkness two houses up the street from the Davila home. Sergeant Armijo shown his spotlight on him and directed Martinez in to talk, but before that could happen, Davila-Vasquez pointed his wife's pistol, a Smith and Wesson 9mm caliber, in the air and fired several shots. In response, Officer Martinez shot him with the impact launcher, which had no effect, except to cause him to



*Smith and Wesson 9mm Pistol found on the street*

focus on the group of officers. He pointed the pistol at the officers, walked toward them and began firing, continuing to advance and fire until he had emptied the pistol, which held 16 cartridges. He failed to hit any of the officers, who were behind their vehicles, but did shoot numerous vehicles and buildings. Three officers in the line of fire returned fire: Chris Enyart fired two shots from his rifle, Louie Armijo fired

twice with his pistol, and Jesse Martinez fired three times with his pistol. Across the street, Nicholas Nielsen fired eight times with his pistol. Davila-Vasquez was struck seven times; remarkably, he survived and recovered.

Davila-Vasquez was charged with multiple counts of Aggravated Assault on a Peace Officer with a Firearm; on June 28, 2018, he pled guilty to one count of Aggravated Assault on a Peace Officer with a Firearm. Sentencing is pending.

## LEGAL ANALYSIS

The officers who shot Juan Davila-Vasquez were in the process of investigating a reported aggravated battery domestic violence incident and would therefore be entitled to raise the defense of Justifiable homicide by public officer, NMSA 1978, Section 3-2-6, which allows a peace officer to use deadly physical force when he believes he or another is threatened with serious harm or deadly force. Under New Mexico law, the officer need not prove that the suspect posed a threat of death or great bodily harm to another; he need only offer evidence that raises the possibility. The burden then falls on the prosecution to prove, beyond a reasonable doubt, that the use of deadly force was unreasonable. If the jury has a reasonable doubt about any aspect of the prosecution claim that the killing was unjustified, they must acquit the officer, Uniform Jury Instruction-Criminal: 14-5173 Justifiable homicide; public officer or employee.

## CONCLUSION

Three officers, Enyart, Armijo, and Martinez, fired in self-defense only after Davila-Vasquez opened fire on them. The fourth officer, Nielsen, fired in defense of his fellow officers who were under attack. There is no evidence to suggest, much less prove beyond a reasonable doubt, that they shot Davila-Vasquez for any other reason. In the absence of such evidence, a jury will almost certainly accept this element of the defense, which would lead them to the next question: were the officers' fears unreasonable under the circumstances? Evidence establishes that Davila-Vasquez, drunk and prepared to fight to the death, was advancing on the officers and firing at them with a pistol. In addition, by pleading guilty to Aggravated Assault on a Peace Officer with a Firearm, he has admitted the officer's claim of self-defense is justified. In the absence of sufficient evidence to prove, beyond a reasonable doubt, that the shooting was unjustified, there is no real likelihood of a successful prosecution; therefore, no charges will be filed against Officers Chris Enyart, Louie Armijo, Jesse Martinez, or Nicholas Nielsen. The case will be closed.

Very truly yours,



Michael D. Cox

Special Prosecutor

Cc: Raul Torrez, District Attorney, Second Judicial District

Detective David Gonzalez, Albuquerque, Police Department

Fred M. Mowrer -attorney for Officer Chris Enyart

John D'Amato-attorney for Sergeant Louie Armijo, Officer Jesse Martinez, and Officer

Nicholas Nielsen

Juan Davila-Vasquez-Metropolitan Detention Center (ID # 1001164891)